

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC. APPLICATION No 828 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE K.J. VAIDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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JAFARBHAI SHAIKH

Versus

STATE OF GUJARAT

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Appearance:

SERVED for Petitioner

MR ST MEHTA APP for Respondent No. 1

MR DR BHATT for Respondent No. 2 (absent)

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CORAM : MR.JUSTICE K.J.VAIDYA

Date of decision: 16/08/96

ORAL JUDGEMENT

Original accused Jafarbai Shaikh by this Criminal Misc. Application under section 482 of the Criminal Procedure Code, 1973, has moved this Court inter alia praying for quashing and setting-aside the proceedings initiated against him by the learned Metropolitan Magistrate, Ahmedabad, pursuant to the complaint by the opponent Ramjibhai Valjibhai Mistry, being Criminal Case No. 672/87, for the alleged offences

punishable under Section 420 of the Indian Penal Code.

2. When the matter was called out, the learned advocate for the petitioner was absent. Despite the fact that Chopdar was sent, he was not available. Under the circumstances, however, with the assistance of learned APP, Mr. S.T Mehta, this Court has heard and decided this matter. This Court was required to do so because having once obtained the stay and forestalled the proceeding, before the trial Court, right from the year 1987, the petitioner cannot be permitted to delay the hearing of this Misc. Criminal Application at whims and convenience of the learned advocate appearing for the petitioner, taking the Court proceedings as if an joy-ride !! Under such circumstances, this Court is not expected to be at the mercy of the learned advocate to hear and decide the case as and when he makes himself available. The cases particularly wherein interim stay is obtained, it is the bounden duty of the concerned learned advocate to be at the back and call of the Court for hearing and deciding the case whenever his matter is called out or to make some arrangement to seek adjournment on some such ground which is appealable to the Court. In criminal cases the time is the most important factor, as every day delay was bound to weaken, further weaken and ultimately destroy the case for the simple reason that in the course of time the evidence may get lost or suffer credibility on any count. This in a way is quite unjust and prejudicial to the aggrieved complainant.

3. Perused the complaint. Heard the learned APP in absence of the learned advocate for the petitioner-accused. Having regard to the facts and circumstances of the case, without prejudice to its contention, the applicant is directed to appear before the Court of learned Metropolitan Magistrate on or before 30th September, 1996, where it will be open to him to plead and show cause that the facts alleged in the complaint do not prima facie disclose any offence and accordingly, the proceedings instituted and process issued against him being ex-facie illegal, the same be quashed and set-aside dropping the criminal proceedings instituted against him. For this purpose, it is indeed not necessary that the petitioner-accused should personally remain present before the learned Magistrate as it will be open to him to make submissions through his learned advocate. As held by the Supreme Court in the case of K.M Mathew versus State of Kerala, AIR (1992) SC p-2206, we also make it clear that the order issuing process is an interim order and not a judgment. It can

be varied or recalled. The fact that the process has already been issued is no bar to drop the proceedings if the complaint on the very face of it does not disclose any offence against the accused, and in this regard if he so satisfies the learned Magistrate.

4. In the result, this Criminal Misc. Application fails and the same is dismissed. The trial Court is directed to fix the date and dispose of the case as early as possible; preferably within 12 months, as the case appears to be pretty old ie., of the year 1987. While conducting the trial, the learned Magistrate shall bear in mind the direction and guidelines given by this Court in case of State of Gujarat versus Dr. C.K Patel, reported in (1991) 2 GLH 354.

4.1 In case for whatever reason of the communication gap, if the petitioner-accused does not appear before the trial Court on 30-9-1996, as directed above, then in that case on that date, the trial Court shall issue fresh summons to the original complainant and the accused fixing the next date for hearing. While issuing the fresh summons to the learned Magistrate in first instance, shall give option to the accused to remain present before the Court either personally or through the learned advocate appointed by him to satisfy the court whether facts in the complaint constitute offence or not justifying the initiation of proceedings and for the process issued pursuant thereto.

4.2 Stay granted earlier stands vacated. Rule is discharged.

4.3 The trial Court is directed to report back to this Court as to when the trial commenced pursuant to this Order and was over, which the Registrar shall place before the concerned Unit Judge for information.

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Prakash\*